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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/651,130	08/30/2000	Kent Malmgren	010315-092	1064

21839 7590 07/30/2004

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EXAMINER


CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/651,130	Applicant(s) MALMGREN ET AL.	
	Examiner Victor S Chang	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-15 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-15 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. The Examiner has carefully considered Applicants' declaration, amendments and remarks filed on 6/3/2004. Applicants' amendments to claims 1, 4, 8, 10-15 and 20, cancellation of claims 16-19 have been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn.
4. The Examiner confirms that the Office action mailed 2/3/2004 is in fact non-final, as shown in the PTO-326 Summary sheet. The Examiner apologizes for the inadvertent inclusion of section 8 in the aforementioned Office action.

Response to Amendment

5. Claims 1, 2, 4-15 and 20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chen et al. (US 6261679), substantially for the reasons set forth in section 7 of Office action mailed 2/3/2004, together with the following additional observations.

Mr. Kent Malmgren's Declaration has been carefully considered. With respect to Mr. Malmgren's statement that "A fibrous network of the kind shown in Chen et al., for example in Figure 2, will have a considerably lower CRC value than claimed since Chen does not disclose that a part of the fiber structure described would have a size small

enough to give a liquid storage capacity as claimed." (Declaration, page 3, section 8), the Examiner repeats (see Office action mailed 2/3/2004, page 6) that Applicants fail to provide any evidentiary support or comparative study results. As such, in the absence of evidence to the contrary, it is the Examiner's position (see Office action mailed 1/9/2003, page 5) that since the open-cell fibrous absorbent structure of Chen is substantially made by the same material (polysaccharides or polypeptides), and by substantially the same process (freeze drying), the instantly claimed absorbent properties, such as CRC, is believed to be either anticipated by Chen, or an obvious optimization to one skilled in the art, motivated by the desire to obtain the required amount of absorbent properties. It should be noted that where the claimed and prior art products are shown to be identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. See MPEP § 2112.01. Finally, it should also be noted that all the particular structural features commented on in the Declaration are utterly absent from the claimed invention. As such, Declarant's comments against the applied art are equally applicable to the claimed invention.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VSC
Victor S Chang
Examiner
Art Unit 1771
7/20/2004


TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700